IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.6710 OF 2004.

Shri Appasaheb Changdev Raut,
age 32 years, Occup.service
as an Assistant Teacher in
Nutan Marathi Vidyalaya,
Prashala and Junior College,
Pune-2. .. ..**Petitioner.**

Versus.

1. Mrs. Snehal Atul Joshi,
age adult, Occu.service,
Residing at B-2/10,
Sudakshana,
LIC Colony, Paud Road,
Pune.

2. Shikshan Prasarak Mandal
S.P. College Compound
Pune 411 030, through its
Secretary,

3. The Head Master,Nutan
Marathi Vidyalaya, Budhwar Peth
Pune 411 002.

4. The Education Officer,
Secondary, Pune
Zilla Parishad,Pune
Pin 411 001.

5. The Deputy Director of
Education,Pune
Division Pune-17,
Dr. Ambedkar Road,
Pune - 411 001.

..Respondents.

With

WRIT PETITION No.7398 of 2004.

1. Shikshan Prasarak Mandal
S.P. College Compound,
Pune 411 030.

2. The Headmaster, Nutan Marathi
Vidyalaya, Budhwar Peth,
Pune 411 002. .. **Petitioners.**

Versus.

1. Mrs. Snehal Atul Joshi,
age adult, Occu.service,
Residing at B-2/10,
Sudakshana,
LIC Colony, Paud Road,
Pune.

2. Appasaheb Changdev Raut,
age adult, Occu.service as an
Assistant Teacher in
Nutan Marathi Vidyalaya
Prashala and Junior College,
Pune.2.

3. The Education Officer,
Secondary, Pune
Zilla Parishad,Pune
Pin 411 001.

4. The Deputy Director of
Education,Pune
Division Pune-17,
Dr. Ambedkar Road,
Pune - 411 001.

..Respondents.

Mr.S.G. Kudle, Advocate for the Petitioner.
Mr.A.M. Joshi, Advocate for the Respondent No.1.
Ms.Meena H. Doshi, Advocate for Respondent No.2.
Mr. A.H. Palekar, A.G.P. for Respondent Nos. 4 and 5.

CORAM:R.M.S.KHANDEPARKAR,J.
DATED:23rd NOVEMBER, 2006.

ORAL JUDGMENT.

1. Heard.

2. Rule. By consent, the Rule is made returnable forthwith.

3. Since both the petitions arise from the common order, they were heard together and are being disposed of by this common judgment.

4. The Writ Petition No. 7398 of 2004 is filed by the Management of the School, whereas the W.P. No. 6710 of 2004 is filed by the candidate who was selected by the Management for the post advertised in the year 2002.

5. The facts which are not in dispute are that the Respondent no.1 in both the Petitions was appointed, initially, as a Part-time Teacher in a School run by the Petitioner in W.P. No. 7398 of 2004 and continued to be so till the academic year 2001-02. In the year 2002 the said post was converted into a post

for a Full-time Teacher.

6. It is the contention of the Management that consequent to conversion of the said post into Full-time Teacher's post, necessary procedure meant for filling up a permanent vacancy was followed and consequent to the interviews by the Selection Committee, the petitioner in W.P. No. 6710 of 2004 was selected and appointed in the said post. It is,however, the contention of the respondent that she was entitled to be continued as a full time Teacher, once she had worked for the institution all throughout since 1996.

7. Upon hearing the learned Advocates for the parties and perusal of the records and impugned judgment, it is seen that the Tribunal proceeded to dispose of the Appeal by directing reinstatement of the Respondent No.1 with full back wages without considering two relevant points. Once it was not in dispute that till the academic year 2001-02 the post was merely a part-time post and it was for the first time converted into full time post, it was necessary for the Tribunal to ascertain whether such a post could be filled in without

following the procedure required to be followed to fill up a permanent vacancy without ignoring the provisions of law comprised under Section 5 of the M.E.P.S.Act or not and secondly whether on conversion of part time post into a full time post, a teacher earlier appointed as a part time teacher in such a post could on the strength of such earlier appointment by itself claim to have been appointed in the full time post without any requirement of following prescribed procedure for filling up a permanent vacancy in terms of Section 5 of the said Act. In other words, once there is a Part-time Teacher and post occupied by such a teacher is converted into a Full time post whether such a teacher ipso-facto continues to be a Full-time Teacher in such a post. Undisputedly, the Tribunal has not considered these points and has not applied its mind to this aspect of the matter and without considering the same has disposed of the Appeal filed by the respondent no.1.

.8 For the reasons stated above, therefore, the impugned judgment cannot be sustained and is liable to be set aside and the matter is

remanded to the School Tribunal to deal with the above points bearing in mind the provisions of law comprised under the M.E.P.S.Act and the Rules made thereunder and after hearing the parties. It is made clear that alongwith the said two points, all other issues which are sought to be raised are also kept open and this Court has not expressed any opinion on any of the issues in the matter. Considering the fact that the matter relates to the year 2002, the Tribunal is expected to dispose of the Appeal, as expeditiously as possible, after hearing the Parties and in any case, on or before 30th June, 2007. Rule is made absolute in the above terms with no order as to costs.

[R.M.S.KHANDEPARKAR,J]